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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ALLAN E. PALMER,

Petitioner,

v.

THE CITY OF SEATTLE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

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QUESTION PRESENTED

Where City of Seattle adds sexual orientation to its Open Housing Ordinance, do the city prosecutors have a responsibility for enforcing this ordinance in the Municipal Courts?

LIST OF PARTIES INVOLVED

Pursuant to the Rules of this Court the following is a party in this Court whose judgment is sought to be reviewed: Allan E. Palmer.

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OPINION BELOW

The Washington State Supreme Court rendered its decision on October 28, 1983 in an opinion reported at 49896-2. A copy of that opinion is attached in Petitioner's appendix.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S. 1254.

The Washington State Supreme Court entered an opinion dated October 28, 1983. Petitioner sought review of a Personal Restraint Petition that was denied by the Court of Appeals on September 23, 1983 (Appendix B).

STATEMENT OF THE CASE

On October 20, 1981 the City of Seattle brought criminal charges against the Defendant, Allan E. Palmer. The Defendant was charged with two counts of discharging a firearm, one count of harassment, reckless endangerment, and menacing.

The trial commenced on November 18, 1981. At trial, court defense counsel stipulated to one count of discharging a firearm, in violation of Seattle Municipal Code 12A.28.050, alleged to have occurred on August 25, 1981.

On December 16, 1981 the Defendant, Allan E. Palmer, was sentenced to serve sixteen days in City Jail and imposed a $250 fine; all sixteen days and $125 were suspended upon the Defendant's compliance with several conditions. The conditions of the suspended sentence were:

(1) The Defendant attend mental health counseling;

(2) The Defendant have no contact with certain named persons in the neighborhood;

(3) The Defendant use no bullhorns or flashlights in the neighborhood;

(4) The Defendant have no criminal offenses.

PARTY INVOLVED

Allan E. Palmer is the sole Petitioner involved.

SUMMARY OF FACTS

On October 20, 1981 the City of Seattle brought criminal charges against the Defendant, Allan E. Palmer, for: 1) discharging a firearm or explosive on August 25, 1981, violating the Seattle Municipal Code 12A.28.050 (Appendix A); 2) harassment; 3) discharging a firearm or explosive on August 9, 1981; 4) reckless endangerment; and 5) menacing. The Defendant was brought to trial on November 18, 1981 and on the condition that the Defendant submit his case to the judge on the police report, all of the charges were dismissed except one count of discharging a firearm on August 25, 1981. To that charge, a not guilty plea was entered and the case was submitted to the Honorable Judge John M. Darrah on the police report. The judge found the Defendant guilty.

ARGUMENT

I.

THE SEATTLE OPEN HOUSING ORDINANCE WAS VIOLATED AT TRIAL COURT

The trial court judge viewed a petition from the neighbors and devised the counseling part of my sentence from the petition that is contrary to the principles of Seattle Municipal Code 14.08.090 (Appendix A).

The petition says: "We are the neighbors of Allan E. Palmer of 3508 West Bertona. We do not feel safe or secure in our own homes or yards with Mr. Palmer as a neighbor. We feel our safety as well as our children's safety is at stake.

"We the undersigned neighbors hope to bring this problem to the attention of the Court of Seattle." (There

are eleven names on the list with addresses and phone numbers given.)

Had I been given an opportunity ". . . to be heard . . ." *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 168, 95 L.Ed. 817, 812, 71 S.Ct. (Frankfurter J. concurring), I would have demonstrated the neighbors substituted the words "safe" and "secure" and "our children's safety" for a known "homosexual" in the neighborhood. A petition of this kind denies me an opportunity to be secure in my house as required in the Fourth Amendment.

Another part of my sentence, "use no bullhorns or flashlights in the neighborhood;" came from a statement that says: "have poor recording of use of megaphone, Officer Messor later witness." Nowhere in the file is there a statement of what poor recording is or a statement from Officer Messor. Needless to say, this is contrary to the Fourth Amendment; quoting *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 2640, 61 L.Ed. 357 (1979), "That was what the Fourth Amendment was enacted to prevent. The right of people to be secure in their persons, houses, papers, and seizures, shall not be violated . . ."

This Court is asked to remand this case to the Seattle Municipal Court with findings that are more consistent with the Seattle Open Housing Ordinances, S.M.C. 14.08. 030 (Appendix A). This Court offers the last chance to validate this ordinance. The courts below have ignored this violation. It is Petitioner's contention that City Prosecutors have a responsibility to enforce all the ordinances of the City in the Municipal Courts.

CONCLUSION

For the above reasons Petitioner prays that a writ be granted.

Respectfully submitted,

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APPENDIX A

STATUTES INVOLVED

Ordinance

S.M.C. 12A. 28.050 DISCHARGING A FIREARM OR EXPLOSIVE.

EXCEPTIONS

It is unlawful to discharge any cannon, gun, pistol, revolver, or other firearm, or to fire or explode or other thing containing powder, or other explosive material, except on days of public celebration or jubilation, and then only as permitted by law. This section shall not apply to the following: licensed shooting galleries, airplane ordinance testing and proving grounds used in the manufacture of aircraft; rifle or pistol practice range located, established, used and/or patrolled by the armed forces of the United States, by the State of Washington, or by the police department; the discharge of any firearm in the performance of official duties or in the course of employment or in civilian sports by any person having a permit or the lawful right to carry such firearm; or to the lawful use of explosives for blasting or construction or demolition work.

ORDINANCE S.M.C. 14.08.030 Unfair Practices Forbidden.

Unfair practices as defined in Sections 14.08.040 through 19.08.09 regarding real property are contrary to the public peace, health, safety and general welfare and are prohibited by the City in the exercise of its police power.

ORDINANCE S.M.C. 14.08.090 Denial of rights granted under this chapter prohibited.

No person whether or not acting for profit, shall harass, intimidate, or otherwise abuse or discriminate against any person or person's friend or associates because of the race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation[1], parental status or political ideology of such person or persons or friends, or associates with the purpose of effect of denying to such person or persons the rights granted in this chapter or the right to quiet or peaceful possession or enjoyment of any real property.

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[1] Includes homosexuality.

APPENDIX B

THE SUPREME COURT OF WASHINGTON

No. 49896-2

In the Matter of the Personal
Restraint Petition of

ALLAN E. PALMER,
Petitioner

RULING DENYING MOTION FOR DISCRETIONARY REVIEW

Allan Palmer moves for discretionary review of an order of the Acting Chief Judge of Division One of the Court of Appeals dismissing his personal restraint petition. In that petition he sought to challenge a 1981 Seattle Municipal Court conviction for discharging a firearm. The Acting Chief Judge essentially found that Mr. Palmer had not made a prima facie showing that constitutional error had occurred during his trial which resulted in his actual and substantial prejudice.

In response to the motion for discretionary review, the City of Seattle urges that this case does not meet the review standards of RAP 13.4(b). The standards for further review of a decision on a personal restraint petition, however, are those set forth in RAP 13.5(b). *See* RAP 16.14(c). Nonetheless, I cannot find that review is warranted under the applicable standards.

Mr. Palmer's principal claim appears to be that his trial counsel was ineffective, because he failed to present certain evidence to the trial court. The case was submitted

to the trial court on stipulated facts, however, as part of an agreement (akin to a plea bargain) in which the prosecution dismissed at least one other charge against Mr. Palmer. There is no indication that Mr. Palmer was not cognizant of the manner in which the case was thus being presented, that he did not participate in the decision to enter into the agreement with the prosecution, or that his counsel did not represent him well and faithfully in assisting in this disposition of the criminal charges. Thus, as the Acting Chief Judge found, Mr. Palmer has shown no constitutional error which resulted in his actual and substantial prejudice.

In short, Mr. Palmer has failed to demonstrate that the Acting Chief Judge committed obvious or probable error in dismissing his personal restraint petition. The standards of RAP 13.5(b) are therefore not satisfied, and the motion for discretionary review must be denied.

DATED at Olympia, Washington, this 28th day of October, 1983.

/s/ Geoffrey Crooks
COMMISSIONER

APPENDIX C

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

No. 13300-4-I

In the Matter of the Personal
Restraint Petition of:

ALLAN E. PALMER,
Petitioner.

ORDER DISMISSING PERSONAL RESTRAINT PETITION

Petitioner Allan E. Palmer seeks relief from his conviction in the Seattle Municipal Court of discharging a firearm or explosive. Petitioner sought review of the conviction in the King County Superior Court under the applicable Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ). After reviewing the record on appeal and considering the oral and written arguments of the parties, the Superior Court affirmed the decision of the municipal court. A subsequent motion for discretionary review of the superior court's decision was denied by a commissioner of this court. A motion to modify the commissioner's ruling was denied, and the Supreme Court denied discretionary review.

Petitioner alleges he should be granted a new trial because: (1) certain relevant evidence was not presented and considered by the trial court, (2) the Seattle Open Housing Ordinance was violated, (3) fair housing for homosexuals should be provided and, (4) ineffective

assistance of counsel. The undersigned having considered the petition and response, and having independently reviewed the record, determines that the petition has no support in either law or fact and appears frivolous on its face. Petitioner has not sustained his burden of proving actual and substantial prejudice involving a constitutional error. *In re Lile*, 100 Wn.2d 224, 225, ____ P.2d ____ (1983). Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed.

Done this 23rd day of September, 1983.

/s/ Durham, J.
ACTING CHIEF JUDGE